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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
D.D.B., B.T.C., D.M.T. and S.T., Minor Children,)
and MELISSA SUE TURPIN, Mother,)

MELISSA SUE TURPIN,)

Appellant-Respondent,)

vs.)

TIPPECANOE COUNTY DEPARTMENT)
OF CHILD SERVICES,)

Appellee-Petitioner.)

No. 79A02-0605-JV-377

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause Nos. 79D03-0601-JT-3, 79D03-0601-JT-5, 79D03-0601-JT-7 and 79D03-0601-JT-9

November 17, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Melissa S. Turpin (“Mother”) appeals from the trial court’s termination of her parental rights with respect to her children S.T., D.B., B.C., and D.T.¹ (collectively “the children”). The issue presented for our review is whether the Tippecanoe County Department of Child Services (“DCS”) presented sufficient evidence to sustain the termination of her parental rights.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother has four children: S.T., born January 26, 1995; D.B., born January 3, 1996; B.C.,² born March 30, 2001; and D.T., born February 9, 2004. In November 2004, the DCS filed an amended petition alleging each of the children to be a child in need of services (“CHINS”). The petitions alleged that the children were in danger due to Mother’s inability, refusal, or neglect to supply the children with necessary food, clothing, shelter, medical care, education, or supervision. Specifically, the DCS alleged that it had received a report on November 24, 2004, that Mother was arrested for shoplifting. Child Protective Services was notified when Mother failed to pick up B.C. and D.T. that day from daycare as a result of her arrest. The investigating officer learned that S.T. and D.B. were in the care of Deidra M. Williams, who had two outstanding warrants for her arrest. The amended affidavit of probable cause that was filed with the CHINS petition also listed Mother’s criminal history and her prior involvement with DCS

¹ D.B.’s father is Dannell Barbee, Sr. B.C.’s father is Harachia China. S.T.’s father is Maurice Weems, and D.T.’s father is unknown. The children’s fathers are not parties to this appeal.

² The Amendment CHINS petition refers to this child as having a different name, but the Order to Terminate Parent-Child Relationship names this child as listed here.

in Tippecanoe and Montgomery Counties and that Mother had tested positive for cocaine after the children were removed from her care.

The DCS established a case plan for Mother, which required her to: participate in individual counseling at the Alpine Clinic; participate in family counseling with Dr. Judith Anderson; visit with the children on a regular basis; submit to random drug screens upon request of the Office of Family and Children (“OFC”), the court, or the Court Appointed Special Advocate (“CASA”); complete a psychological evaluation through Dr. Toth at Alpine Clinic and follow all recommendations; complete a psychiatric evaluation through Alpine Clinic; remain drug-free; maintain monthly contact with the OFC; participate in CA/RE Group;³ complete the Intensive Outpatient Program at Alpine Clinic; participate in case management and parent training with Stephanie Myers; voluntarily attend Reflections Program and YWCA after completion of IOP and Home With Hope; submit to random drug screens through The Counseling Center; participate in supervised visitation through The Villages, following all rules; obtain and maintain a source of income and housing; pay court-ordered reimbursement; comply 100 percent with all court-ordered services; and contact the family case manager a minimum of once every two weeks.

On January 17, 2006, the DCS filed petitions to terminate Mother’s parental rights as to the children. In each petition, DCS alleged, in relevant part, that (1) the child has been removed from the parent for at least six months pursuant to dispositional orders; (2)

³ Neither party defined this term or referred to anything in the voluminous record to define this term. We also take this opportunity to note that Appellant’s Appendix was very difficult to navigate because the Table of Contents referred to individual documents by exhibit number. We respectfully suggest that listing the individual documents in the Table of Contents by name would greatly facilitate our review of the issues on appeal.

there is a reasonable probability that the conditions that resulted in the removal of the child will not be remedied, the reasons for placement outside the parent's home will not be remedied, or that the continuation of the parent-child relationship poses a threat to the well-being of the child; (3) termination of the parent-child relationship is in the child's best interest; and (4) DCS has a satisfactory plan for the care and treatment of the child.

After a hearing on the petitions, the trial court issued its order terminating Mother's parental rights to S.T., D.B., B.C., and D.T on April 4, 2006. The trial court's order provided, in relevant part:

7. Mother has an extensive criminal history involving battery, multiple substance abuse, forgery, check deception, criminal conversion and driving while suspended. Mother is currently in the Indiana Department of Correction. Mother's previous probation was revoked and she was sentenced on July 27, 2005, to four (4) years executed at the Indiana Department of Correction with no credit for time served.

8. Mother was originally accepted in the Tippecanoe County Forensic Diversion Program. She was unsuccessfully released from that program for failing to follow the rules. She was then placed at the Tippecanoe County Work Release Program, violated their program, and is in the Department of Correction.

9. Mother has pending criminal charges in Tippecanoe Superior Court 5.

10. This family [h]as an extensive history of CPS history in Montgomery and Tippecanoe County. In November 1996, neglect[] was substantiated on [Mother] and Dannell Barbee in regard to S[.]T[.] and D[.]B[.] witnessing domestic violence and drugs in the home. In March 1998, medical neglect was substantiated on Mother in regard to D[.]B[.] The children were removed from Mother's care. The children were returned after Mother obtained appropriate medical care. In February 2003, neglect was substantiated when Mother left S[.]T[.] and D[.]B[.] home alone and did not send them to school. The children were removed from Mother's care and later returned when a safety plan was established. In July 2003, neglect was substantiated on Mother when her children were unsupervised outside after midnight and Mother was not home. In April 2004, neglect was

substantiated on Mother when she became enraged and physically threatened medical staff in front of her children.

* * *

12. Mother came to the attention of the Tippecanoe Department of Child Services, TCDSCS, again on November 24, 2004, when Mother was arrested for shoplifting and her children were not being supervised. This was the second time in November 2004 that Mother had been arrested and incarcerated based on theft.

* * *

17. Mother loves her children very much. However, she has shown over the past ten (10) years that she cannot keep them safe. Mother has a chronic and habitual pattern of having her children around dangerous people, not following rules, engaging in criminal behavior, using drugs, not accepting help and putting her children a distant second to the [sic] her own needs. Mother's pattern of instability has had a harmful effect on her children.

18. Mother testified that she would need nine (9) months of services after her release from prison to be ready to have the children returned to her.

19. Throughout the case, Mother was inconsistent with working with services and was more concerned with her criminal case than working with services in the CHINS. Mother would miss visits. Mother would choose to be with criminal friends in violation of the Forensic Diversion Program.

20. Mother's psychological evaluation found, [r]esults^[4] of personality testing showed significant issues relating to substance abuse, impulsiveness, emotional lability, limited social support, a history of involvement in intense and volatile relationships, anxiety, and depression. Her personality test profile suggested that she has a number of features of borderline personality disorder, including concerns about being abandoned or rejected by others, a pattern of unstable and intense interpersonal relationships, impulsiveness, affective instability, and inappropriate and intense anger.

21. According to Stephanie Myers, Mother's family preservation worker, for the last ten years, Mother has a pattern of not being able to keep her children safe, CPS involvement, drug[s] and alcohol, criminal involvement.

⁴ Alteration in original.

* * *

24. Mother was able to stay drug[-]free following the children's removals, completed an Intensive Outpatient Program and Home with Hope. Mother was not as successful in working on the other issues relating to the safety of her children.

25. Judith Anderson, Ph.D[.], Child Psychologist, has worked with the [sic] S[.]T[.], D[.]B[.] and B[.]B[.] since January 2005 to date [sic]. Dr. Anderson reported that S[.]T[.] is a very angry [child] that has an unhealthy relationship with mother. He feels responsible for what has happened to Mother. He feels [that] it is his job to take care of his Mother. D[.]B[.], also, has major anger issues. B[.]B[.] was an out[-]of[-]control child that appeared to have had little structure in his life. He is an ADHD child. Many of the children also had issues pertaining to different dads who were not involved in their lives. The Children report past issues with their Mother's temper, drug use and her ups and downs. Children believe that their Mother is unreliable and have said their good byes to her since she would not be able to take care of them for a long time.

26. Dr. Anderson testified that Mother would get mad and leave visitations early. Mother has a pattern of not accepting responsibility and not wanting to work to get reunited with her children.

27. According to Dr. Anderson, the children need a permanent safe home where they can be together and be children and not little adults. All four children will continue to need services based on their experiences in Mother's home.

28. Mary Joe Cuculic has been the TCDACS family case manager from December 2004 to date. [Mother] would have different patterns of participating in services that would change weekly. She would refuse to attend visits, and then she would have a great visit. She was not able to sustain any improvement in safe parenting. It was a very active treatment team working with Mother. They met frequently and gave Mother constant updates and intensive intervention. Cuculic testified that Mother is still not able to provide a safe home for her children. The patterns of instability continue with Mother.

* * *

30. CASA, Kimberly Walsh, has been the children's CASA since December 2004. CASA spent extensive time with the children and

working on this case. CASA supports the termination of Mother's parental rights. CASA reported, "Melissa Turpin remains in the Rockville Correctional Facility (DOC#116311) with the earliest release of 2-25-07. Melissa Turpin has a 10 year history of substantiated neglect cases against her relating to these children. Her life choices have again placed her in a situation where she is no longer able to provide for her children". Petitioner's Ex. 73.

* * *

32. CASA observed numerous visitations between Mother and children. CASA saw Mother threaten children during the visitation.

33. The Court finds that Mother's incarceration is not the basis of the granting of TCDCS's petition. The Court finds that even if Mother had been successful in her sentence modification and released, it is in the children's best interest to not be in her care. The conditions that [led] to the children's removal are still present and Mother cannot keep her children safe.

34. To continue the parent and child relationships would be detrimental to the children. Mother has shown that she does not have the desire to utilize services to learn skills necessary to help nurture and protect her child[ren]. Mother has not been able to make decisions in her children's best interest. [These] children need permanency. They need to know that they will be protected from emotional or physical harm; that they will be protected from their Mother's unstable lifestyle, criminal activity and drug usage; and that their basic developmental needs will be met.

35. The Court further finds as a matter of law that the children were removed from Mother's home under a dispositional order dated more than six months prior to the filing of the Petitions to Terminate Parental Rights.

36. The Court finds as a matter of law that reasonable, appropriate, necessary services have [been] offered to Mother and children over an extended period of time commencing with the initial removal in November 2004, to date. The services have been exhaustive and have been designed to address the difficulties presented by the family in the initial CHINS petitions upon the initial removal of the children from the family, and to address other difficulties that have come to light since the TCDCS became involved with this family. The services have been aimed at alleviating the problems requiring the removal of the child[ren] from Mother's care and permitting reunification and minimizing safety, health, mental health and emotional concerns.

37. The Court finds as a matter of law that after approximately fifteen (15) months of rendering services of various kinds with different providers to this family that there is not any basis for any reasonable belief that the circumstances which resulted in the removal of the children from their Mother's care or the reasons for continued placement outside the home will be remedied. Mother's pattern of erratic behavior, drug usage, and criminal behavior establishes that she failed to fully cooperate with and learn from services. Mother does not indicate that she has a basic understanding or belief of the harm her child[ren have] suffered given her drug use and unstable lifestyle. Mother is, therefore, unable to provide a minimally safe, secure and stable home for her children.

Appellant's App. at 42-46. Mother appeals.

DISCUSSION AND DECISION

Mother contends that the evidence is insufficient to support the involuntary termination of her parental rights under Indiana Code Section 31-35-2-4(b)(2). In particular, she maintains that the evidence does not show that the conditions resulting in the children's removal have not been remedied or that the continuation of the parent-child relationships poses a threat to the children's well-being. We cannot agree.

Initially, we note that the purpose of terminating parental rights is not to punish parents, but to protect the children. Weldishofer v. Dearborn County Div. of Family & Children (In re J.W.), 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied.

Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents. This includes situations not only where the child is in immediate danger of losing his life, but also where the child's emotional and physical development are threatened.

Id.

In reviewing a decision to terminate a parent-child relationship, this court will not set aside the judgment unless it is clearly erroneous. Everhart v. Scott County Office of

Family & Children, 779 N.E.2d 1225, 1232 (Ind. Ct. App. 2002), trans. denied. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. Id. When reviewing the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Id.

To support a petition to terminate parental rights, the DCS must show, among other things, that there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child.

Ind. Code § 31-35-2-4(b)(2)(B). The DCS must also show that termination is in the best interests of the child and that there exists a satisfactory plan for the care and treatment of the child. Ind. Code § 31-35-2-4(b)(2)(C), (D). These factors must be established by clear and convincing evidence. Ind. Code § 31-34-12-2.

Initially, with regard to subsection (B) of the statute, we note that the DCS need only present clear and convincing evidence that either the conditions resulting in removal will not be remedied or that the continuation of the parent-child relationships poses a threat to the children's well-being. Because we hold that the evidence is sufficient to support the trial court's conclusion that continuation of the parent-child relationships poses a threat to the well-being of the children, we need not address whether the conditions resulting in their removal will be remedied.

In interpreting Indiana Code Section 31-35-2-4, this court has held that the trial court should judge a parent's fitness to care for his or her child as of the time of the

termination hearing, taking into consideration evidence of changed conditions. J.K.C. v. Fountain County Dep't of Pub. Welfare, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984). However, recognizing the permanent effect of termination, the trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. Id. To be sure, the trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. Id. at 93.

A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change. Matter of D.B., 561 N.E.2d 844, 848 (Ind. Ct. App. 1990). Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve. Matter of D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1985). When the evidence shows that the child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother contends that the DCS did not present clear and convincing evidence that continuation of the parent-child relationships posed a threat to the well-being of S.T., D.B., B.C., and D.T. But Mother does not challenge any of the trial court's findings, which are supported by the evidence and which support the termination of her parental

rights. In particular, the trial court found that Mother: had a pattern of instability that had a harmful effect on her children, failed to follow the rules of court ordered programs, was not as successful in working on issues relating to the safety of her children as she was in staying drug-free, had a pattern of not accepting responsibility and not wanting to work to get reunited with her children, was unable to sustain any improvement in safe parenting, and placed her own interests above those of her children. The trial court also found that “Mother’s pattern of instability has had a harmful effect on her children,” Appellant’s App. at 44; that “the children need permanency,” *id.* at 45; and that the children “need to know that they will be protected from emotional or physical harm; that they will be protected from their Mother’s unstable lifestyle, criminal activity and drug usage; and that their basic developmental needs will be met,” *id.* Such findings are sufficient to support the trial court’s conclusion that a continuation of the relationships between Mother and the children poses a threat to the children’s well-being. See Everhart, 779 N.E.2d at 1234-35. We will not reweigh the evidence.

Mother alleges that “[i]t is not the relationship with [Mother] that is a threat to her children’s well-being, but the poor choices she has made in the past that posed a threat. [Mother] is making better choices now, and, with adequate time, treatment and hard work, she will do better.” Appellant’s Brief at 21. Mother attempts to distinguish her conduct from her relationship with her children. But Mother’s conduct defines her relationship with her children and determines whether they are safe in her care. DCS provided reunification services for fifteen months, and at the conclusion of that period Mother was incarcerated because of her failure to follow program rules. Mother

estimated that she would require at least nine months of additional services after her release from prison (presumably in 2007) before she would be ready to care for her children. And there was testimony that the children believe Mother is unreliable, that they have unhealthy relationships with Mother, and that they need permanency.

Mother's patterns of conduct, as shown by her admissions, the testimony of other witnesses at the termination hearing, and the findings made by the trial court, demonstrate that she cannot provide a minimally safe, secure, and stable home for S.T., D.B., B.C., and D.T. Mother argues that the trial court has not shown an actual threat to the children's well-being. In essence, Mother asks us to reweigh the evidence, which, again, we will not do. The evidence supports the trial court's determination that the continuation of the parent-child relationship poses a threat to the well-being of the child. See Ind. Code § 31-35-2-4(b)(2)(B)(ii).

Mother also asserts that the DCS did not show that termination is in the best interest of the children. Specifically, Mother challenges the trial court's finding that Mother's incarceration is not the basis of granting the termination petitions. But Mother points to nothing in the record to support her contention that her present incarceration was the basis for the termination of her parental rights. As such, that argument fails.

The evidence is sufficient to support the trial court's conclusion that termination is in the children's best interest. The trial court found that Mother placed her own interests above those of her children. Further, Mother has an extensive history with Child Protective Services, including several substantiated cases of neglect. Stephanie Myers, Mother's family preservation worker, testified that Mother has a pattern of not being able

to keep her children safe, a history of CPS involvement, a history of drug and alcohol use, and a criminal history. Steve Peterson, Mother's individual therapist, testified that Mother would not take her prescribed psychotropic medication despite his admonitions. And Dr. Judith Anderson, Ph.D., the children's psychologist, testified that Mother had a pattern of not accepting responsibility and not wanting to work to be reunited with the children and, further, that the children need a permanent safe home where they can be together and be children, not little adults. Finally, the CASA testified in favor of terminating Mother's parental rights.

Mother did not contest any of the trial court's findings with the exception of its ultimate conclusion that termination was in the children's best interest. Thus, to the extent she challenges the trial court's finding in that regard, she asks us to reweigh the evidence. As noted above, this we cannot do. Thus, we hold that the evidence is sufficient to support the trial court's conclusion that termination is in the children's best interest.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.